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CONCORD, N.H.

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex

Mr. Barry:

In reply to your question of February 3, 1954, whether, in filling the position of CASE Administrator, you must accept from the Division of Personnel a promotional register exclusively which prevents your consideration of permanent appointment the provisional employee now occupying the position, despite the fact he ranked first in the open competitive examination, I advise as follows:

The Personnel Commission is given the duty to make such rules and regulations, subject to the approval of the Governor and Council, as it shall deem necessary or proper to carry out the purposes of the act which created the Commission, R. S. 27:2, s. 3 (RSA) as amended by Laws 1950, c. 8, s. 2.

Rule III, section 6, so made and approved by the Governor and Council provides in part:

"Recent employees desiring promotion shall be given preference in appointment from the appropriate register in accordance with the provisions of Section 6 of this rule."

I am advised that the Division of Personnel has interpreted "promotion" as referred to therein as interdepartmental promotion and has decided preference to be given to recent employees of the State when a position is to be filled by the selection to a department head of a promotional register in the first instance.

It is clear from the quoted rule that it was the intention to give a preference to one desiring promotion. Such preference is to be given "from the appropriate register in accordance with the provisions of Section 6 of this rule." Section 6 applies to a "Recruitment and Open Competition Register" while Section 7 applies to an "Interdepartmental Promotional Register."

Mr. James J. Barry, Commissioner

February 4, 1954

This ambiguity resulting from Section 6 requiring promotional preference in accordance with a register, by virtue of Section 8, which does not deal with promotions and would destroy the preference, has been interpreted by the Division as an error in naming Section 8 instead of Section 7. I am informed that they have consistently followed the practice of trying to observe the intent of Section 6 and require selection of an appointee from an interdepartmental promotional register in the first instance.

In light of the patent ambiguity of Section 6 I cannot say that the Division's interpretation and application is incorrect or unreasonable in the absence of any evidence of arbitrary or inconsistent application.

There being no such evidence I must answer your question in the affirmative.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD:JCI